

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Protecting Consumers from Unauthorized Carrier)	CG Docket No. 17-169
Changes and Related Unauthorized Charges)	
)	

REPLY COMMENTS OF BILLING SERVICES GROUP NORTH AMERICA, INC.

Billing Services Group North America, Inc. (“BSG”) hereby submits the instant reply comments in response to the above-referenced Notice of Proposed Rulemaking (“Notice” or “NPRM”) in which the Federal Communications Commission (“Commission”) seeks comment on additional steps to protect consumers from unauthorized carrier changes and charges.¹ As noted in our comments,² BSG understands the Commission’s desire to thwart unauthorized carrier changes (referred to as “slams”) and unauthorized charges (referred to as “crams”) on consumer bills. We agree, however, with the vast majority of commenters, who have urged the Commission to exercise restraint before adopting new regulations.

First, neither the Notice itself nor the record thus far contains compelling, fact-based reasoning or substantive data in support of changing the Commission’s rules. Just as important, commenting parties have recognized that Commission action to eliminate or impose additional regulations on Third-Party Verifications (“TPVs”) would either remove outright—or weaken—the only *independent* means

¹ See *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, Notice of Proposed Rulemaking, CG Docket No. 17-169, 32 FCC Rcd 6022 (2017) (“Notice”).

² See Comments of Billing Services Group North America, Inc., CG Docket No. 17-169 (filed Sept. 13, 2017) (“BSG Comments”).

by which to confirm a customer's desire to switch service providers. In addition, imposing a default carrier freeze would strip consumers of meaningful choices in today's modern communications marketplace. Such an outcome would only harm competition and consumer choice, two of the Commission's highest priorities. As discussed below, BSG opposes proposals to eliminate or require certification of TPVs, impose a default preferred carrier freeze, and block third-party billing.

As an initial matter, the Notice does not include a compelling rationale or meaningful data.

Commenters in addition to BSG have observed the conclusory nature of the Notice. At bottom, the proposals set forth in the Notice are unsupported by data.³ For example, Telplex concludes "the Commission is not engaging in evidence-based, data-driven decision-making"⁴ and recommends that the Commission undertake an extensive inquiry to elicit additional relevant information in connection with the agency's analysis.⁵ In addition, NTCA asserts that the proposals set forth in the Notice "are vague, lack specificity, are unsupported by any data, and could generate" undeterminable costs.⁶ NTCA further notes "in the complete absence of data, cost estimates, or even coherent rule proposals, the [Initial Regulatory Flexibility Analysis] declares, with a complete lack of support, that the 'Commission *believes* that any economic burden these proposed rules may have on carriers is outweighed by the considerable benefits to consumers.'"⁷

Similarly, Telplex, CALTEL, and Comcast argue persuasively that the relatively low number of complaints does not justify the proposed additional regulations. First, Telplex states "there does not

³ See Comments and Initial Regulatory Flexibility Analysis Response of NTCA—The Rural Broadband Association, CG Docket No. 17-169 (filed Sept. 13, 2017) ("NTCA Comments") at 6.

⁴ Comments of Preferred Long Distance, Inc. d/b/a Telplex, CG Docket No. 17-169 (filed Sept. 13, 2017) ("Telplex Comments") at 7.

⁵ *Id.* 7-9.

⁶ *Id.* at 2.

⁷ NTCA Comments at 6 (emphasis added by NTCA).

appear to be any attempt by the Commission to even elicit basic data that would allow the Commission's economists to conduct the most rudimentary analysis of whether any rule changes are even justified, let alone the costs and benefits of the proposed rules[.]”⁸ CALTEL adds “nowhere does the NPRM contain any facts or figures comparing the number of complaints to the number of local numbers ported or otherwise transferred each year.”⁹ In addition, Comcast notes “there simply is no evidence that the Commission's current rules and enforcement practices have been proven ineffective ... Indeed, Commission data indicate that the total number of slamming complaints received in 1998 was approximately *fifty* times greater than the number of complaints received in either 2015 or 2016.”¹⁰ These data demonstrate that the Commission's existing safeguards have effectively deterred slamming and cramming incidents over the course of almost two decades.

While the Notice seeks to impose a host of new regulations, the commenters have shown that the Notice lacks both a compelling rationale and meaningful data. As a result, the Commission cannot move to implement its proposals without developing a factual justification for changes to its rules.

Action to eliminate or require certification of TPVs would do away with the only independent check on a customer's desire to switch providers. At the outset, we note that the record neither addresses nor resolves a key question: Does the Commission hold jurisdiction over TPVs?¹¹ Although implementing the proposals to mandate certification of or to eliminate TPVs would regulate the relationship between a carrier and an independent third-party vendor, the Commission's jurisdiction in

⁸ Telplex Comments at 7.

⁹ Comments of the California Association of Competitive Telecommunications Companies, CG Docket No. 17-169 (filed Sept. 13, 2017) (“CALTEL Comments”) at 3.

¹⁰ Comcast Corporation (“Comcast”) Comments, CG Docket No. 17-169 (filed Sept. 13, 2017) at 1-2, 4 (emphasis in original).

¹¹ See BSG Comments at 4-5.

this area is unclear. Unless and until a legally-sustainable analysis is made available for comment, the Commission cannot move forward in this area.

Further, as set forth in BSG's Comments, the Commission has long stressed the importance of independent verifications to best ensure effective competition.¹² Simply put, actions to eliminate or impose additional regulations on TPVs would risk jeopardizing telecommunications consumers' ability to freely choose their service provider.

A host of commenters in addition to BSG recognize and appreciate the critical role fulfilled by independent verifiers, especially when compared with "double-check" confirmation calls proposed in the Notice.¹³ Citing concerns about anti-competitive behavior, commenters oppose permitting the consumer's current service provider to double-check its subscriber's choice to change service providers.

For instance, Telplex reports that certain of the rules under consideration "would give incumbent carriers even more market power and control."¹⁴ CALTEL expresses support for independent TPVs and explains "retaining existing customers [is] even more important, and retention marketing tactics even more aggressive, than ever before," concluding that "there is no reason to believe that permitting existing providers to perform 'double-checks' with the customer prior to executing a change would not result in ... consumer abuses."¹⁵ Likewise, Verizon recognizes that requiring the current service provider to double-check consumer choices "would be burdensome to

¹² See BSG Comments at 3, 5.

¹³ See Notice at ¶ 29.

¹⁴ See Telplex Comments at 11.

¹⁵ CALTEL Comments at 7.

implement, would confuse customers, and would delay effectuating a customer's request to change service providers."¹⁶

Telplex also specifically opposes a double-check by the current provider because such calls "are ripe for abuse by incumbents."¹⁷ CTA "oppose[s] in the strongest possible terms placing the responsibility of verifying a long-distance service switch into the hands of their largest and well-funded competitors" given that such a process would create "an insurmountable conflict of interest."¹⁸ CTA adds that the "potential for mischief is particularly troubling" because such verifications could include "choice of wording, tone, emphasis, and other sales pressure tactics," which would unduly hamper the consumer's free choice.¹⁹ Finally, NCTA also opposes action to require or even permit service providers to double-check a consumer's change request, and labels this idea as "a recipe for anticompetitive delays and tactics on the part of the original carrier, which will then have the ability and incentive to attempt to dissuade the customer from changing to the new provider."²⁰

Given the broad support for independent verifications, action to eliminate or adopt new regulations for TPVs would be harmful. In addition, action on any of the TPV proposals would be inconsistent with the careful balance between efficiently and lawfully completing verifications and not unduly imposing burdens on the consumer. Implementing these proposals would negatively alter the current consumer-friendly landscape, and curtail, if not eliminate, the benefits arising from innovative offerings and lower prices (including flat rates for budget-conscious consumers).

¹⁶ Comments of Verizon, CG Docket No. 17-169 (filed Sept. 13, 2017) at 12.

¹⁷ Telplex Comments at 17.

¹⁸ Comments of the Coalition for a Competitive Telecommunications Market ("CTA"), CG Docket No. 17-169 (filed Sept. 13, 2017) at 14.

¹⁹ *Id.*

²⁰ Comments of NCTA—The Internet & Television Association ("NCTA"), CG Docket No. 17-169 (filed Sept. 13, 2017) at 4.

Imposing a default preferred carrier freeze would create a burdensome process and deprive consumers of meaningful choices. The Commission must proceed mindful of its longstanding recognition that “preferred carrier freezes by their very nature impose additional burdens on subscribers”²¹ and prior conclusion that a default freeze would facilitate the losing providers’ ability to discourage consumers from switching providers through “conduct that would blur the distinction between its role as a neutral executing carrier and its objectives as a marketplace competitor.”²² These principles are more applicable in today’s dynamic telecommunications sector than they were almost 20 years ago.

CALTEL asserts that the record contains no support for “a mandatory default freeze on any services.”²³ And, according to Comcast, a default carrier freeze “would cause customer confusion, create an opportunity for the losing provider to engage in retention marketing practices, frustrate the FCC’s broadband policies, ... , and impose excessive costs on providers.”²⁴ BSG agrees. A default freeze is overkill—such drastic action would only undermine the Commission’s aim to encourage and sustain a competitive telecommunications sector.

Inherent in the Commission’s long-held principles is the concept that consumers deserve the ability to choose the best plan for their individual needs and budgets. Rather than empower consumers, a freeze is an outright constraint. A freeze would erect an artificial barrier to entry for competing carriers—and would therefore quash the associated consumer benefits. Finally, neither the

²¹ *Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 at ¶ 100 (1998) (“1998 Order”); *see also Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, Fourth Report and Order, 23 FCC Rcd 493 at ¶ 11 (2008).

²² 1998 Order at ¶ 106.

²³ CALTEL Comments at 5.

²⁴ Comcast Comments at 2.

Notice nor the record contains analysis regarding the social and economic costs of a freeze as compared to any perceived benefits. For these reasons, BSG opposes any action to impose a default freeze.

Blocking third-party billing would curtail consumer choice. Finally, the Notice fails to recognize that carriers must have the flexibility to choose whether to handle billing on their own, or to retain a billing aggregator. Billing aggregators allow carriers to provide competitive pricing and customized service offerings. WTA explains that blocking third-party billing “would pretty much destroy any remaining economic or efficiency basis for the arrangement.”²⁵ WTA also states that carriers “would find it much more complicated and expensive to re-configure their billing systems to separate out and distinguish between those customers of each third party [long-distance carrier] that are billed directly by the [long-distance carrier] and those for whom the [local carrier] continues to bill and collect.”²⁶ Carriers must have the flexibility to choose whether to handle billing on their own, or to retain a billing aggregator.

Billing aggregators allow carriers to provide competitive pricing and customized service offerings. Action to block third-party billing would constrain consumer choice and unfairly penalize lawful entities seeking to provide alternative telecommunications services. And, here again, the Notice and the record do not contain the requisite analysis regarding the social and economic costs of blocking third-party billing as compared to any perceived benefits. Thus, BSG opposes action on this proposal.

²⁵ WTA—Advocates for Rural Broadband (“WTA”) Comments, CG Docket No. 17-169 (filed Sept. 13, 2017) at 7.

²⁶ *Id.* at 8.

Conclusion. Setting aside the question of the Commission's authority to regulate TPVs, the proposals set forth in the Notice to eliminate TPVs or mandate TPV certification will not improve the agency's efforts to thwart unauthorized carrier changes and charges. Moreover, the record sheds light on TPVs' objective and effective role in verifying a consumer's wish to change providers. Likewise, many commenters agree with BSG that action to impose a default preferred carrier freeze and/or to block third-party billing would curtail consumer choice and the associated benefits rendered by a competitive marketplace. Commenters have not presented a compelling rationale for moving ahead on these proposals, let alone supplied the extensive data required for such a radical departure from the Commission's current rules. Even Consumers Union, which by and large supports the proposals, concedes, "care must be taken so that a customer may easily switch phone providers if they would like."²⁷

Respectfully submitted,

/s/ Bridget Mimari

Bridget Mimari
General Counsel
Billing Services Group North America, Inc.
7411 John Smith Drive, Suite 1500
San Antonio, Texas 78229
Bridget.Mimari@bsgclearing.com

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²⁷ Comments of Consumers Union *et al.*, CG Docket No.17-169 (filed Sept. 13, 2017) at 7.